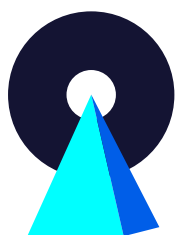


L'essentiel



Evaluation of technical identification measures: effective tools but mainly dedicated to audiovisual content and insufficiently widespread

The Intellectual Property Code entrusts Arcom with the mission of evaluating the technical identification measures (TIMs) deployed by online content-sharing service providers; the Authority must also encourage cooperation between them and rightholders.

The evaluation led by Arcom in 2022 shows that TIMs, when deployed, generally meet the expectations of rightholders, even if they are more suitable with audiovisual and musical works than literary and image contents. Moreover, it appears only the main content-sharing service providers have implemented these measures.

These main providers have signed agreements with rightholders coming mostly from the audiovisual sector. Arcom calls for the development of such agreements, and the extension to other cultural sectors for the existing ones.

Content-sharing service provider: new status and new liability regime

The transposition of Article 17 of the European Directive of 17 April 2019 on copyright in the digital single market introduced, in Article L137-1 of the Intellectual Property Code (IPC), the status of **content-sharing service providers**.

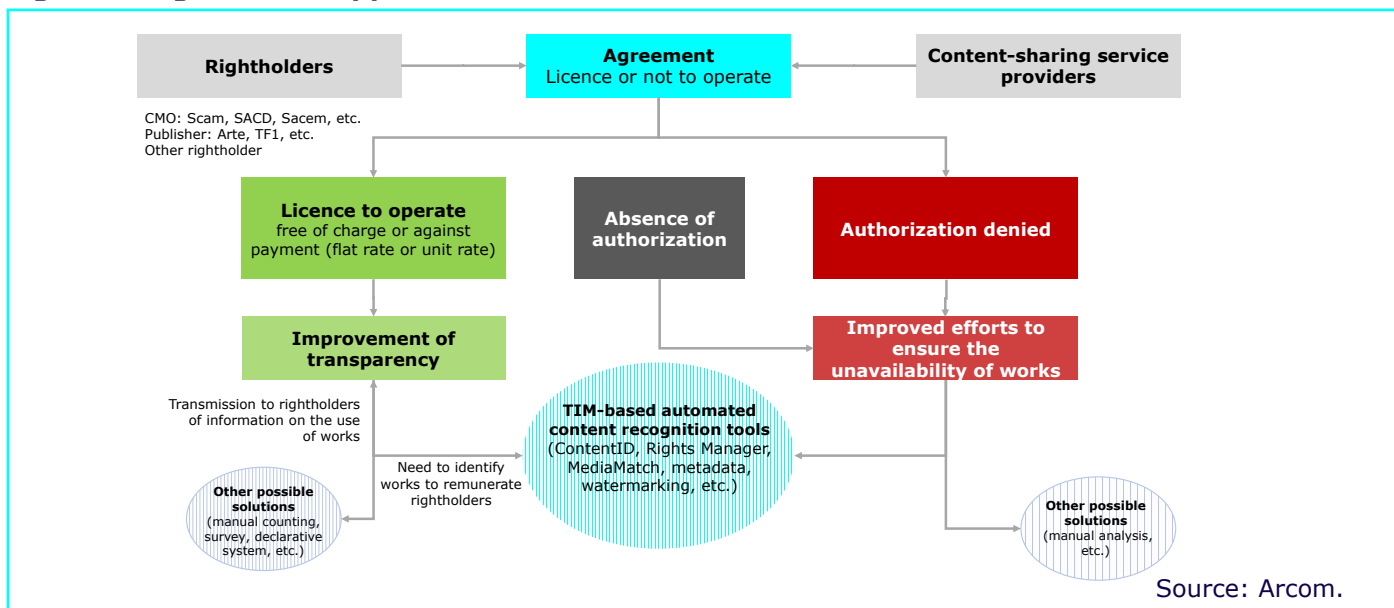
The functioning of these services relies upon content uploaded and shared by users, creating a large quantity of content available, including protected works. Content-sharing service providers thus carry out **acts of representation** that have to be **authorized** in prior by rightholders.

Where **no authorization is granted**, service providers can avoid liability on the following conditions:- they must have made their best efforts **to ensure the unavailability**

of the content for which the rightholders have given them the relevant and necessary information after being notified they must have acted promptly to **remove the work or disable access to it**, and **prevent** any further uploading attempt.

The use of **technical identification measures (TIMs)** is therefore necessary in order to identify content, whether to measure its actual consumption, particularly for monetisation purposes, to block it before it is made available, to disable access or to remove it following a notification.

Figure 1: Diagram of the application of Article L137-2 of the IPC



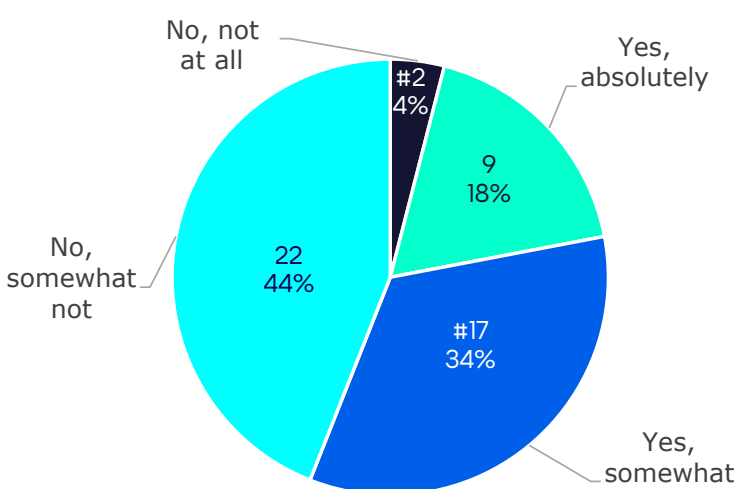
Arcom's task and role

The law of 25 October 2021 entrusted Arcom with the **task of evaluating the level of effectiveness of the measures** taken by online content-sharing service providers with regard to their ability to ensure the protection of works and protected objects, a task specified by Article L331-18 of the IPC.

Within this framework, Arcom can draft **recommendations** on the level of effectiveness of protection measures, **encourage** cooperation between rightholders and content-sharing service providers or use **dispute settlement process** between users and rightholders in the event of a dispute over the action taken by the service provider on a user's complaint.

Half of rightholders consider that they are aware of the existing TIMs

Figure 2: Knowledge of content identification tools



Base: all respondents (50 rightholders).
Source: Ifop study for Arcom 2002.

Knowledge of the existence of TIMs is usually the result of searches carried out by the rightholders themselves. A minority (less than five respondents) indicated that they do not have to seek information, considering that service providers should provide the relevant information.

The highest awareness of TIM's is among audiovisual rightholders. They closely bound TIMs anti-piracy issues. Indeed, audiovisual contents have long been subject to massive illicit spread over content-sharing services.

Only half of music rightholders consider themselves well informed, through the prism of the licensing agreements signed with service providers.

TIMs based on digital fingerprinting technology are generally satisfactory

Four content identification technologies are used by rightholders that responded to Arcom enquiry: metadata analysis, used by 60% of them, digital fingerprinting (43%), digital watermarking (38%) and digital hashing (7%, only two respondents).

Not all are suitable for all content. Metadata allows, for example, the identification of fixed content (image or photo). Fingerprinting technologies are more suitable for audiovisual content and therefore widely used by the main video sharing platforms (YouTube, Dailymotion, TikTok, Facebook/Instagram).

Evaluation of content recognition by rightholders shows tools based on digital fingerprints seem to be **generally satisfactory**. However, rightholders from other sectors than music and audiovisual, that can use different solutions than fingerprinting, may be more nuanced; which is particularly the case for publishing and still images rightholders.

Table 1: Existing fingerprint technologies and access conditions

Tools	Service providers
<i>Audible Magic</i>	Dailymotion (non-owner)
<i>Content ID</i>	YouTube (owner)
<i>Copyright Match Tool</i>	YouTube (owner)
<i>INA signature</i>	Dailymotion (non-owner)
<i>MediaMatch</i>	TikTok (owner)
<i>Content claiming portal</i>	Pinterest (owner)
<i>Rights Manager</i>	Meta (owner)

Source: Arcom.

The agreements seem satisfactory. Most of them are with YouTube and Meta.

11 out of 50 rightholders that responded to Arcom’s consultation say they had concluded exploitation or blocking agreements with service providers. These 11 rightholders are mainly from the **audiovisual** sector (50% of respondents within the sector) and **music** (45%).

In total, Arcom have counted **39 agreements**. They were concluded with **eight different service providers**, 30 by the music rightholders and 9 by the audiovisual rightholders. **YouTube** and the services provided by **Meta** (Facebook and Instagram) are the services with the most agreements with rightholders.

For music and audiovisual rightholders perspective these agreements are **generally** satisfactory. One music rightholder even considers them to be **“indispensable”**.

For music and audiovisual rightholders perspective these agreements are **generally** satisfactory. One music rightholder even considers them to be **“indispensable”**.

However, even if other service providers have concluded agreements (e.g. Dailymotion and TikTok), **further efforts needs to be done** in order to involve more rightholders (from music and audiovisual) and to **cover all cultural sectors** (photography and publishing).

Table 2: Rightholders' views on agreements with content-sharing service providers

	Very	Some-what	Some-what not	Not at all
Satisfactory	#2	10	2	5
Suitable	#1	11	1	5
Useful	#6	6	1	5
Effective	#2	11	1	4

Note for the reader: although 19 respondents answered the question, not all of them filled in all the criteria.

Source: Arcom.

Numerous agreements and content recognition technologies within the major content-sharing services are generally encouraging.

Nevertheless, Arcom considers that these efforts should be continued and extended to all service providers, in particular by ensuring better communication with rightholders, especially those from other sectors than audiovisual or music (publishing and still images, among others).

Content-sharing service providers could:

with regard to rightholders:

(Recommendation 1) improve information towards rightholders of any sectors regarding recognition tools at their disposal;

(Recommendation 2) propose training courses or give access to tutorials to rightholders, even through collective management organisations, in order to help them to master recognition tools;

(Recommendation 3) set up simplified tools for rightholders who do not have the technical and economic resources to use complex tools;

(Recommendation 4) make content management systems easier to use and supplement the management options offered;

with regard to users:

(Recommendation 5) mention the applicable copyright rules and provide information on the situations in which exceptions to copyright can be made;

(Recommendation 6) ease access to reporting forms, in particular by ensuring better visibility and free access to them;

(Recommendation 7) inform French users of the to copyright rules in France, in particular those resulting from Article 17 of the Copyright Directive and Articles L137-1 et seq. of the IPC;

(Recommendation 8) specify, in the general conditions of use or in the online dispute forms, the possibility for users and rightholders to refer to Arcom's dispute settlement process, in the event of a dispute.

Rightholders could:

(Recommendation 9) produce reference information on copyright and its exceptions so that it can be made available by providers of a content-sharing service;

(Recommendation 10) systematically pursue the conclusion of agreements, in particular with regard to rightholders in photography and publishing;

(Recommendation 11) ensure that Arcom is provided with all the answers it needs to carry out its evaluations;

(Recommendation 12) inform Arcom of the agreements concluded.

Both parties could:

(Recommendation 13) continue to collaborate with the goal of concluding agreements and open these agreements to all cultural sectors.

Methodology

- Scope of the evaluation: 13 content-sharing service providers identified according to the criteria defined by Decree No 2021-1369 of 20 October 2021 and its implementing decree of the same day.
- Public consultation via online questionnaires with the 13 identified content-sharing service providers (seven respondents) and rightholders from all sectors (50 respondents), conducted between April and July 2022.

For further reading: www.arcom.fr

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